

U.S. Military Courts-Martial Fact Sheet

Judge vs. a Jury Panel

- The Uniform Code of Military Justice (the law governing U.S. military service members) allows the accused in this type of court-martial to be tried by either a military judge or a panel of military members.
- Each soldier chose to be tried by a panel of military members.

Jury Panel Composition:

- Panel members are the military equivalent of a civilian jury. In a general court-martial, the minimum number of panel members is five.
- Panel members must be active-duty U.S. military members who also are subject to the jurisdiction of the Uniform Code of Military Justice.
- Civilians and KATUSAs cannot be panel members because they are not subject to the Uniform Code of Military Justice. Although KATUSAs serve each day in U.S. military units, they are only subject to the Korean military judicial system.

Jury Panel Selection:

- In both of the recent trials, five officers and five enlisted soldiers were selected from a pool of potential panel members.
 - Defendants have the right to be tried by a panel, and enlisted soldiers can request that at least 1/3 of the panel be enlisted soldiers.
- Panel members are questioned about their knowledge of the case and other pertinent issues to determine if they will be impartial.
 - The prosecution and the defense can remove potential panel members if their answers make them seem biased towards either the prosecution or defense, but there must be at least 5 members on the final panel.

Testimony the panel can consider:

- The law allows panel members to hear testimony by witnesses regarding the facts. Opinion testimony is substantially limited. For example, a witness cannot testify about something about which he or she lacks personal knowledge. If a witness is qualified as an expert witness, he or she may offer an opinion based on information provided to him or her.

SOFA:

- A common misperception is that USFK has jurisdiction over every SOFA-status person who commits a crime. In 2001, 82% of all crimes committed by USFK personnel in Korea were subject to Korean jurisdiction. This high percentage confirms our respect for Korean sovereignty and judicial processes.
- The Korea judicial system has the right to exercise its jurisdiction in all but two narrow types of offenses:
 - Offenses perpetrated by SOFA personnel solely against the property or security of the U.S. or against a SOFA-status victim

- Offenses committed in the performance of official duty (as was the case with the June 13th accident)
- The SOFA, as amended in 1991, gives Korean authorities greater participation in the “official duty” decision than any other US ally; however, as military expertise and judgment is required, the final decision is made by a US general officer after receiving the advice of his military lawyer (judge advocate).
- This arrangement under the SOFA is completely different from the Korean military justice system.
 - ROK soldiers are never tried by Korean civilian courts. If the driver or track commander had been a ROK soldier, including a KATUSA, he would have been tried by ROK military courts-martial, not the civilian criminal courts.
 - Where the ROK has a SOFA agreement with another country, the ROK military has exclusive jurisdiction over its personnel.

Accountability for Accident

- In the U.S. military judicial system, there is a distinction between holding someone “criminally responsible” and being “responsible.”
- Two impartial panels heard all the facts, evidence and legal arguments and determined that the individual soldiers were not proven by the prosecution to be criminally negligent beyond a reasonable doubt, the same standard of proof used in Korean military and civilian courts.
- However, the US military in Korea has already accepted overall responsibility and civil accountability for this accident:
 - The former Eighth Army Commander, Lt. Gen. Daniel R. Zanini, immediately apologized the same day the accident occurred and ensured the accident was investigated by both ROK and U.S. authorities.
 - Public apologies were made to the Korean people by Maj. Gen. Russell Honore, former Second Infantry Division Commander; Gen. Leon J. LaPorte, Commander of USFK; Ambassador Thomas Hubbard, U.S. Ambassador to Korea; Assistant Secretary of State James Kelly, and Secretary of State Colin Powell.
 - The Second Infantry Division Commander, the Chief of Staff, and the driver of the vehicle visited the families to personally apologize.
 - USFK worked to ensure just compensation was paid to the families. Initial solatia (expression of sympathy) payments of one million won for each family were made quickly. Both families accepted approximately 195 million won each. USFK paid 75 percent of the final claims for compensation settled under Korean law and the SOFA on 11 September 2002 with the full involvement of ROK claims authorities.
 - In addition, hundreds of soldiers in the 2nd Infantry Division participated in candlelight vigil to honor the girls.
 - Soldiers donated more than \$22,000 for the two families.
 - Other private donations totaling more than \$30,000 were received to construct a memorial to the two girls.
 - Following joint investigations we held two trials to allow two impartial jury panels to examine all the evidence and determine whether or not the accident was caused by

criminal negligence. The two panels separately found that the soldiers were not proven to be criminally negligent beyond a reasonable doubt.

- Adverse administrative actions were taken against other members in the chain of command.
- The Second Infantry Division made both trials as accessible as possible, so the US military judicial process would be transparent to the Korean public.